



ANTONIO R. VILLARAIGOSA
Mayor

Commission
THOMAS S. SAYLES, *President*
ERIC HOLOMAN, *Vice-President*
CHRISTINA E. NOONAN
JONATHAN PARFREY
BARBARA E. MOSCHOS, *Secretary*

RONALD O. NICHOLS
General Manager

February 15, 2011

Ms. Jeanine Townsend
Clerk to the board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Dear Ms. Townsend:

Subject: Revised Section III of the Monitoring and Reporting Program, Option D for the *Draft Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for Residual Pesticide Discharges to Waters of the United States from Aquatic Animal Invasive Species Control Applications* (Invasive Animals permit); the *Draft Statewide General NPDES Permit for Residual Pesticide Discharges to Waters of the United States from Pesticide Spray Applications* (Spray permit); and the *Draft Statewide General NPDES Permit for Residual Pesticide Discharges to Waters of the United States from Vector Control Applications* (Vector permit)

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the revised *Section III of the Monitoring and Reporting Program, Option D*, as presented in the *Response to Comments* document for each of three draft permits: Invasive Animal, Spray and Vector permits. LADWP would like to thank the staff of the State Water Resources Control Board (Board) for their work on these permits and with the many stakeholders.

As noted in previous correspondence, LADWP supports the approach proposed for the United States Environmental Protection Agency national general pesticide permit, which relies upon operational performance and best management practices (BMPs). Permitted dischargers represent little or no threat to water quality; as such dischargers are trained in the proper use of pesticides and associated BMPs.

Water and Power Conservation ... a way of life

111 North Hope Street, Los Angeles, California 90012-2607 Mailing address: Box 51111, Los Angeles 90051-5700
Telephone: (213) 367-4211 Cable address: DEWAPOLA



Ms. Jeanine Townsend
Page 2
February 18, 2011

The monitoring requirements found in Section III, Option D are an improvement from previous iterations, in that toxicity testing requirements that would have proven onerous to most water agencies, while providing little useful information, have been significantly revised. LADWP also applauds the fact that pre-existing or "background" toxicity in receiving waters is acknowledged.

However, LADWP believes that it is necessary to revise the following items.

1. Section III, Option D, Page 5, 3rd Paragraph of the "Responses to Comments" document

"For the first application, the discharger shall collect one Background sample and one Event sample in the application area for toxicity testing. If the Background sample result shows no toxicity, the discharger shall continue taking only Event samples until a total of *six consecutive Event sample results* (emphasis added) show no toxicity in the receiving water. Thereafter, no further testing for toxicity will be required for the active ingredient used at that representative site. "

There is inherent variability associated with toxicity testing, as well as aquatic pesticide applications to water (depending upon water depth, flow rate, spot versus large-scale treatment, time of year and day). For these reasons, it has proven very difficult to monitor for pesticide residuals in the field. In addition, "short-term pulses" of toxicity may be detected in receiving water that previously demonstrated no toxicity – a further reflection of inherent variability. LADWP assumes that toxicity tests will correctly determine that a non-toxic sample is indeed non-toxic ninety-five percent of the time. This conversely means there will be false-positive results five percent of the time. Using this assumption, even if all samples are non-toxic, the probability of passing the six consecutive tests will be no more than 74 percent. Given the role of variability, the probability may in fact be even lower.

Determining the causes of toxicity is very difficult, which is why most California water bodies that are impaired for toxicity list the source as "unknown." Further, toxicity testing serves only to establish general toxicity in the receiving water, not the presence of residual pesticides. Rather, analytical chemistry is the most appropriate tool for assessing whether deliberate pesticide applications have adverse impacts on water quality. If the purpose of the toxicity testing requirement is to determine the presence of unknown ingredients that are contained in pesticides, other more appropriate analytical methods exist.

As a public agency and drinking water supplier, protecting water quality, its beneficial uses – and public health - are of LADWP's most important missions. However, a review

Ms. Jeanine Townsend
Page 3
February 18, 2011

of the 303(d) list shows that unknown sources are responsible for most of the toxicity impairment found in the state's water bodies, not entities such as LADWP that undertake deliberate pesticide applications. The toxicity of these pesticides is known, is used for beneficial purposes, and is applied in a manner consistent with its labeling, by well-trained operators.

In light of the above, LADWP believes that the need for toxicity testing has not been established and suggests that the Board reconsider whether or not toxicity testing is valid for the pesticides permits. However, should the Board require toxicity testing, LADWP requests that the above-referenced section be revised as follows (proposed text shown in bold-face):

"For the first application, the discharger shall collect one Background sample and one Event sample in the application area for toxicity testing. If the Background sample result shows no toxicity, the discharger shall continue taking only Event samples until a total of **three consecutive Event sample results** (emphasis added) show no toxicity in the receiving water. Thereafter, no further testing for toxicity will be required for the active ingredient used at that representative site. "

2. Section III, Option D, Page 5, 3rd Paragraph of the "Responses to Comments" document

"For the first application, the discharger shall collect one Background sample and one Event sample in the application area for toxicity testing. If the Background sample result shows no toxicity, the discharger shall continue taking only Event samples until a total of three ("three" is the recommended change cited above) consecutive *Event sample results* (emphasis added) show no toxicity in the receiving water. Thereafter, no further testing for toxicity will be required for the active ingredient used at that representative site. However, the presence of toxicity *in the Event sample* (emphasis added) at anytime indicates that: (1) there is *pre-existing toxicity in the receiving water* (emphasis added), but the application is not adding to the pre-existing toxicity;..."

The above segues from a scenario of no toxicity in the *background sample* (emphasis added), to a determination of receiving water toxicity via an *Event sample* (emphasis added). The above excludes the next, intermediate scenario: that pre-existing toxicity may be established via a receiving water Background sample. This is important, as a review of the Clean Water Act 303(d) List of Water Quality Limited Segments Requiring Total Maximum Daily Load for California reveals that most sources of toxicity pollution are designated as "unknown" or "nonpoint sources." "Unknown" or "nonpoint" sources logically exclude most active ingredients used by permitted dischargers, with the exception of copper.

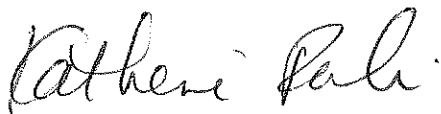
Ms. Jeanine Townsend
Page 4
February 18, 2011

If there is pre-existing toxicity in receiving water, this significant fact must be reported to the Board for two reasons: (1) to establish a formal record of pre-existing toxicity in that specific receiving water; and because (2) pre-existing toxicity can affect a determination of toxicity resulting from a discharger's applications.

Therefore, LADWP requests that the above-referenced section be revised as follows (proposed text shown in bold-face): "For the first application, the discharger shall collect one Background sample and one Event sample in the application area for toxicity testing. If the Background sample result shows no toxicity, the discharger shall continue taking only Event samples until a total of three consecutive Event sample results show no toxicity in the receiving water. Thereafter, no further testing for toxicity will be required for the active ingredient used at that representative site. **If the Background sample result shows toxicity, the discharger shall report this to the State Water Resources Control Board (Board) within sixty days. If identifiable, all active ingredient/s that contribute to the toxicity must also be reported. If the contributing active ingredient/s cannot be identified, this shall also be reported.**

Thank you for this opportunity to provide comments. Should you have any questions regarding this letter, please contact Ms. Jennifer Pinkerton, of the Wastewater Quality and Compliance Group, at (213) 367-4230.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Rubin".

Katherine Rubin
Manager of Wastewater Quality and Compliance Group

JP:db
c: Ms. Jeniffer Pinkerton